

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:)
)
HORACIO HERNANDEZ and)
ARACELY HERNANDEZ,) Case No. 19-31771-hcm
)
)
) Chapter 13
Debtors.)

**MOTION OF ENGS COMMERCIAL FINANCE CO. FOR RELIEF FROM STAY AGAINST
PROPERTY OF THE ESTATE AND WAIVER OF 30-DAY REQUIREMENT**

TO THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE:

Comes now Engs Commercial Finance Co. (“Engs”), a creditor in this case, filing this Motion of Engs Commercial Finance Co. for Relief From Stay Against Property of the Estate and Waiver of 30-Day Requirement (“*Motion*”) pursuant to Section 362(d) of the Bankruptcy Code, and in support thereof would respectfully show the Court as follows:

This pleading requests relief that may be adverse to your interest.

If no timely response is filed within fourteen (14) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

1. Horacio Hernandez and Aracely Hernandez, the Debtors, filed for relief under Chapter 13 of the Bankruptcy Code on October 25, 2019.

2. The Debtor is indebted to Engs pursuant to a Commercial Finance Agreement (the “*Agreement*”) dated April 23, 2015 in the original principal amount of \$43,169.19. The balance owing on the Agreement was \$10,836.52 as of the bankruptcy filing date. Interest continues to accrue and Engs is incurring attorney’s fees to the extent it is over-secured. Engs is the legal and equitable holder of the

Agreement. A true and correct copy of the Agreement is attached to this Motion, labeled Exhibit "A" and incorporated herein for all purposes.

3. The Agreement is secured pursuant to its terms by a 2011 Freightliner Cascadia Sleeper Tractor, VIN# 1FUJGLDVXBSBB2407, including all replacements and proceeds thereof and other appurtenant property described in the Agreement (collectively the "*Tractor*"). Engs perfected its lien on the Tractor by being noted as lienholder on the Certificate of Title. A copy of the Certificate of Title is attached to this Motion, labeled Exhibit "B" and incorporated herein for all purposes.

4. Engs is entitled for relief from stay pursuant to Bankruptcy Code Section 362(d)(1) for cause. Pursuant to the Debtors' proposed Chapter 13 Plan, the Tractor will be surrendered. The Debtors do not propose any payments to Engs under their Plan and it continues to depreciate. Engs is not adequately protected and the automatic stay should be lifted.

5. Alternatively, Engs is entitled to relief from stay pursuant to Bankruptcy Code Section 362(d)(2). According to the Debtors' Schedules the value of the Tractor is \$9,000.00. Therefore, there is no equity in the Tractor. Further, since it is to be surrendered the Tractor is not necessary to an effective reorganization.

6. Engs waives the 30-day hearing requirement and requests a hearing in El Paso, Texas.

7. Engs requests that the 14-day stay set out in Federal Rule of Bankruptcy Procedure 4001(a)(3) be waived. Waiver is appropriate because the Tractor is to be surrendered and no payments are proposed to Engs under the Plan.

8. A proposed Order granting this Motion is attached hereto.

WHEREFORE, Engs Commercial Finance Co. requests relief from the automatic stay, waiver of the 14-day stay, and such other and further relief to which it is entitled.

Respectfully submitted,

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By: _____
James W. Brewer
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Attorneys for Engs Commercial Finance Co.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Motion was delivered by first class U.S. Mail to the parties listed below on November 14, 2019.

James W. Brewer

Debtors:

Horacio Hernandez
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El Paso, Texas 79936

Aracely Hernandez
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Debtor's Attorney:

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Trustee:

Stuart C. Cox
Chapter 13 Trustee
1760 N. Lee Trevino
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